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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,383	03/11/2005	Stephen D. Newman	40302-0033	5729
37526 7590 05/25/2010 RADER, FISHMAN & GRAUER PLLC 39533 WOODWARD AVENUE SUITE 140 BLOOMFIELD HILLS, MI 48304-0610				
EXAMINER				
REYNOLDS, STEVEN ALAN				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
05/25/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,383

Applicant(s)

NEWMAN ET AL.

Examiner

Steven Reynolds

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 77, 85 and 99-101 is/are pending in the application.
- 4a) Of the above claim(s) 99 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 77 is/are allowed.
- 6) ☒ Claim(s) 85, 100, 101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment filed on 5/10/2010 wherein claims 77 and 85 were amended, and claims 100 and 101 were added. Claim 99 remains withdrawn from consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 100 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear whether the "contact lens case engagement surface" in line 3 is the same as the contact lens case engagement surface presented in claim 1. It appears that claim 100 should read "The holder of claim 77, wherein the contact lens engagement surface is configured to positionally lock said contact lens case....." This correction would appear to overcome and clarify issues.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 85 and 101 are rejected under 35 U.S.C. 102(b) as being anticipated by Artis (US 5,699,900). Artis discloses a reusable holder for contact lens cases comprising: a base (base portion 10 – See Fig. 1); one or more receptacles (opening/cavity 12 is considered a receptacle) get formed in said base is capable of receiving a fully enclosed fluid tight contact lens case; and a time keeping device (counter 40); wherein the time keeping device comprises a case life indicator for each one or more receptacles that can indicate a period of time to discard the fully enclosed contact lens case; wherein said one or more receptacles configured to receive a contact lens case includes: a contact lens case engagement surface (threaded surface at 12 – See Fig. 1) formed on said one or more receptacles configured to receive said contact lens case in said one or more receptacles (the threaded surface can receive a portion of a contact lens case that has an outward extension capable of engaging the threads); and an actuator (button 42) formed in said base, wherein said actuator is configured to be triggered and reset said time keeping device corresponding to the receipt of a contact lens case in said one or more receptacles; wherein said actuator comprises a mechanically actuated timer reset switch disposed in said one or more receptacles; and wherein said mechanical timer reset switch is configured to engage a surface of a contact lens case being inserted into said receptacle and automatically reset the time keeping device when a contact lens case is inserted into the receptacle.

Allowable Subject Matter

6. Claim 77 is allowed.
7. Claim 100 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 5/10/10 have been fully considered but they are not persuasive. Applicant argues that Artis fails to disclose a fully enclosed fluid tight contact lens case. Contrary to Applicant's argument, claim 85 only requires the one or more receptacles formed in the base to be "configured to receive" a fully enclosed fluid tight contact lens case. Since the fully enclosed fluid tight contact lens case is not positively claimed, the receptacle of Artis must only be capable of receiving a fully enclosed fluid tight contact lens case.

Applicant argues that Artis does not disclose a case life indicator. Contrary to Applicant's argument, the time keeping device (40) of Artis can be considered a case life indicator as it keeps track of the number of times the device was used; and for example, if the user used the device at the same time each day, the user would be aware or how many days the contacts were used and therefore know when to discard the contacts once used for the desired number of days.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. R./
Examiner, Art Unit 3728

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728